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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 860.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JUNE 17, 1884.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 In the Court of Claims.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY
vs.
THE UNITED STATES.
No. 13,369.

I.—*Petition. Filed November* 22, 1882.

The petition of the Nashville, Chattanooga and St. Louis Railway Company respectfully shows:

1. That the petitioner is a citizen of the United States, duly incorporated by and under the law of the State of Tennessee, with corporate name as above, a common seal, legal capacity to plead and be impleaded, and with principal office or place of business at the city of Nashville, in said State.

2. That prior to a certain date, to wit, the thirty-first day of May, A. D. 1873, the corporate name and style of the petitioner was and had been since about the eleventh day of December, A. D. 1845, the Nashville and Chattanooga Railroad Company.

3. That the petitioner, under the said corporate name of the Nashville and Chattanooga Railroad Company, (now changed, under and by virtue of the laws of the said State of Tennessee, to the Nashville, Chattanooga and St. Louis Railway Company as aforesaid,) on or about the 24th day of April, A. D. 1858, contracted with the United States to carry the mails between Nashville and Chattanooga, and Tullahoma and McMinnville, in the said State of Tennessee, for the term beginning the first day of July, 1858, and ending the first day of July, 1862, for a compensation of $32,750 per year.

2 4. That the said petitioner fully and faithfully performed the stipulated service till the 1st day of June, A. D. 1861, when the contract and services were terminated by the United States.

5. That for the service rendered from the 31st day of March, A. D. 1861, to the 1st day of June, A. D. 1861, the said petitioner was never paid, nor has any compensation ever been made therefor, directly or indirectly, by any government, authority, or person whatsoever.

6. That this claim has never been presented to nor acted upon by any authority or officer, except as stated below.

7. That the petitioner, as contractor aforesaid, is the sole owner of and person interested in said claim, or ever interested therein.

8. That under the provisions of an act of Congress approved March 3, 1877, and published in volume 19 Statutes at Large, page 362, the said petitioner became entitled to receive and it became the duty of the Secretary of the Treasury to pay, or cause to be paid, to petitioner the sum of $8,187.50 as compensation for the aforementioned service.

9. That the said petitioner duly applied to the Auditor of the Treasury for the Post Office Department (in whose lawful custody was and is the records of the contract, service, and indebtedness

herein specified) to be paid the amount due under said act, but payment was withheld and refused by said Secretary and said Auditor, and is still withheld and refused.

10. That the sum of $8,187.50 is justly due to said petitioner, exclusive of all just credits and offsets.

11. That the said petitioner has at all times borne true allegiance to the United States, and never voluntarily aided, abetted, or encouraged rebellion against the same.

12. In consequence of the premises, the petitioner prays judgment for the sum of $8,187.50 in full settlement.

CHARLES F. BENJAMIN,
Attorney for Petitioner.

STATE OF TENNESSEE, }
County of Davidson, } *ss:*

R. C. Bransford, being duly sworn, deposes and says that he is the secretary of the aforesaid Nashville, Chattanooga and St. Louis Railway Company; that he has read and knows the contents of the aforesaid petition, and the facts therein are true to the best of his knowledge and belief, and that he has, in virtue of his office, attached the common seal of said corporation to the said petition.

[SEAL.] R. C. BRANSFORD,
Secretary N., C. & St. L. R'way.

Subscribed and sworn to before me, this 18th day of November, A. D. 1882, as witness my hand and official seal.

[SEAL.] H. L. CLAIBORNE,
Notary Public for Davidson County, Tenn.

3 II.—*Traverse. Filed January* 5, 1883.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Ass't Attorney-General.

4 III.—*Motion of Claimant for Leave to Amend Petition. Filed February* 28, 1884, *and Order Allowing Same.*

And now comes the claimant, by attorney, and moves the honorable court for leave to amend the petition by striking out the words "first day of June," in the 4th paragraph of said petition, and sub-

stituting therefor the words *tenth day of July;* also by striking out the word "first" or "1st," in the 5th paragraph, and substituting therefor the word *eighth;* so that said petition shall aver that service was performed to the tenth day of July, instead of the first day of June, 1861, and that compensation isdue to the eighth instead of the first day of June, 1861.

And for cause of this motion the petitioner saith that the dates named and fixed in said petition are those which apply to a great number of cases analagous to that of the petitioner and have been generally accepted as historically correct, but that the evidence adduced in this particular cause tends to show that the dates herein proposed are the true dates pertaining to the subject-matters of such cause.

And the petitioner moves further for a dispensation from the rule requiring the petition to be reprinted if the preceding motion shall be granted.

Respectfully submitted.

CHAS. F. BENJAMIN,
Counsel, &c.

February 26, 1884.

And now, to wit, June 2, 1884, it is ordered by the court that the motion of the claimant for leave to amend the petition by striking out the words "first day of June," in the fourth paragraph of the said petition, and substituting therefor the words "tenth day of July," and also by striking out the word "first" or "1st," in the fifth paragraph, and substituting therefor the word eighth, be allowed, without prejudice to any defence of the statute of limitation or other defence on the part of the defendants, and it is ordered that this order take effect *nunc pro tunc* as of February 28, 1884.

IV.—*Findings of Fact and Conclusion of Law. Filed by the Court April* 21, 1884.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

The claimant, a corporation under the laws of Tennessee, on May 27, 1858, entered into two several contracts with the defendants to transport the mails both ways between Nashville and Chattanooga, and between Tullahoma and McMinnville, for a term of four years from July 1, 1848, at an annual aggregate compensation of $32,750, payable quarterly, said contract being in the usual form of contracts used at that date for that description of service.

II.

During the spring and summer of 1861 the claimant continued to carry the mails, and mail matter was furnished and delivered to it

for transportation by the United States until the issuance of a general order by the Postmaster-General discontinuing the mail in the seceded States. But on the 8th day of June, 1861, the claimant opened an account with the Confederate Government for postal service, and on that same day closed its account with the United States; that is, charging the United States from the 1st to the 8th of June, and the balance of the month to the Confederate States. The accounts were not actually opened on that date, but were opened on the 30th day of June, as of the 8th, and the Confederate Government paid for the service performed from the 8th to the 30th June, and for service subsequent thereto.

III.

If the claimant be entitled to recover from the defendants only to the 1st May, 1861, the balance due on that day, after deducting $703.89 subsequently collected from postmasters on the line of the road, was $2,025.28; if the claimant be entitled to recover up to the 1st June, 1861, the balance due on that day (including the foregoing) was $4,754.44; if the claimant be entitled to recover up to the 8th June, 1861, the balance due on that day (including both of the foregoing) was $5,482.31.

IV.

August 30, 1861, and September 27, 1862, the Confederate congress passed the following acts, and in pursuance thereof settled
7 and paid up to September 30, 1862, claims of the character described to the amount of $502,017.19:

An act to collect for distribution the moneys remaining in the several post-offices of the Confederate States at the time the postal service was taken in charge by said Government.

The Congress of the Confederate States of America do enact, That it shall be the duty of the postmaster-general to collect all moneys due from the several postmasters within the Confederate States, and which they had not paid over at the time the Confederate States took the charge of the postal service, and the several postmasters are hereby required to account to the general post-office of this Government under the same rules, regulations, and penalties that were prescribed by the law under which said moneys were received.

SEC. 2. The moneys so received shall be kept separate and distinct from the other funds of the post office department, and shall constitute a fund for the *pro rata* payment of claims for postal service which accrued before the postmaster-general took charge of the postal service in the States respectively comprising this Confederacy, as may hereafter be provided.

SEC. 3. It shall be the duty of the postmaster-general to make proclamation that all persons who are citizens of the Confederate States of America, and who may have rendered postal service in any of the States of this Confederacy, under contracts or appointments

made by the United States Government before the Confederate States Government took charge of such service, shall present their claims to his department, verified and established according to such rules as he shall prescribe, by a time therein to be set forth, not less than six months, and requiring the claimant to state, under oath, how much has been and the date of such payments, on account of the contract or appointment under which said claim occurred, and what fund or provision has been set apart or made for the further payment of the whole or any portion of the balance of such claim, by the Government of the United States, or of any of the States; and they shall also state, on oath, whether they performed fully the service according to their contracts or appointments during the time for which they claim pay, and if not, what partial service they did perform, and what deductions have been made from their pay, so far as they know, on account of any failure, or partial failure, to perform such service; and the postmaster-general shall, as soon as he shall have collected such moneys from said postmasters, and ascertained the amount of claims against the post office department and the amount received respectively by the claimants as aforesaid, and the provisions, if any, for future payment, make a report of the same, so that future action may be taken thereon as respects the distribution.

SEC. 4. All claims for postal service required to be presented by this bill shall be barred as against this fund unless presented within six months after the proclamation of the postmaster-general shall have been made.

Approved August 30, 1861.

An act to provide for the payment of sums ascertained to be due for postal service to citizens of the Confederate States by the postmaster-general.

The Congress of the Confederate States of America do enact, That the postmaster-general of the Confederate States do proceed to pay to the several persons, or their lawfully authorized agents or representatives, the sums respectively found due and owing to them for postal service rendered in any of the States of this Confederacy, under contracts or appointments made by the United States Government before the Confederate States Government took charge of such service, as the said sums have been credited and ascertained by him under the provisions of an act entitled "An act to collect for distribution the moneys remaining in the several post offices of the Confederate States at the time the postal service was taken in charge by said Government," approved the thirtieth day of August, 1861; but the sums authorized by this act to be paid are only the balances found due after all proper deductions shall have been made on account of previous payments made by the United States, or any of the States, or of available provisions made in whole or in part for such payment by said Government, or of any of the States, and after making all proper deductions for failures or partial failures to perform the service according to their several contracts or apointments

during the time for which they claim pay: *Provided*, That the provisions of this act shall only extend to loyal citizens of the Confederate States.

Approved September 27, 1862.

V.

It appears from the evidence that the account-books of the company between June 8, 1861, and April 30, 1865, contain a full and correct exhibit of receipts and payments, and they show pay-
8 ments by the Confederate Government for services rendered subsequent to the 8th June, 1861; but the books show no evidences of payment made by the Confederate Government on account of mail service rendered to the United States prior to June 8, 1861, and the general bookkeeper of the company was in such position in 1861 and 1862 that if the company had been paid by the Confederate authorities he would have known it, and would have known all the money that came into the hands of the company; and no payment was made, to his knowledge, for services rendered the United States prior to June 8. But it does also appear that the company began carrying the mail for the Confederate Government from the date that the United States mail ceased to be transported; also that the said company was largely engaged during the rebellion in transporting troops, supplies, and munitions of war, as well as mail for the Confederate Government, and was regularly paid therefor; also, that any payment for the services now in controversy, if made, would have been made to the president of the company, and that he was "a man that looked out sharply for the company's interests" and for "anything that was due the company."

It does not appear from the evidence whether the claim of the company for the transportation of United States mails was or was not paid by the Confederate Government.

And the court, from the foregoing facts and circumstances, and without other or more positive evidence, finds the ultimate fact that the claim set up in this action was not paid by the Confederate Government.

VI.

In 1871 a bill in equity, filed in behalf of the United States against the Nashville and Chattanooga Railway Company, was pending in the United States circuit court for the middle district of Tennessee, to enforce certain demands of the United States against said company. In pursuance of an agreement between and by consent of the parties to the suit, the decree hereinafter set forth was entered in said court.

The cause of action now pending in this court was not a subject of litigation in the circuit court. The company there did not set up as a set-off or cross-action any demand for mail transportation accruing before or since the war. And in the negotiations which led to the decree above mentioned the claim which forms the subject-matter of this action was not mentioned by either party.

The following is the decree above described:

THE UNITED STATES OF AMERICA
vs.
THE NASHVILLE AND CHATTANOOGA RAILROAD COMPANY and E. W. Cole, president.

Be it remembered that on the 10th day of November, 1871, this cause was heard before the judges of the circuit court of the United States for the middle district of Tennessee, at Nashville, upon its equity side, upon the bill of complaint, exhibits, previous proceedings, and agreement of parties, in the presence of R. McPhail Smith, United States district attorney, representing the complainant, and E. H. Ewing and W. F. Cooper, solicitors of the defendant, where it appeared to the court that since the last term, in and by virtue of an act of Congress in that behalf, a compromise of all the matters in litigation between the parties has been entered into and fully consumated upon the following terms, stipulations, and conditions, namely, the defendants, the Nashville and Chattanooga Railroad Company, for and in consideration of the return and surrender to it, by the United States, of its road as it existed at the
9 time of the said return and surrender, with all the iron, cross-ties, bridges, and other fixtures, appurtenances, and effects in anywise appertaining and belonging to the said road, and returned, surrendered, and turned over therewith, and for and in consideration of the rolling stock, depot houses, and all other the property and effects sold and delivered by the United States to the said defendant, and for which compensation is claimed by said bill, and for and in consideration of the transfer and assignment of said road, rolling stock, fixtures, appurtenances, and all other said property and effects as aforesaid by the United States to the said defendant, with all the rights of the United States therein acquired by conquest or otherwise, and for and in consideration of the settlement, satisfaction, and discharge of all mutual claims and accounts between the parties as they existed on the 1st day of June, 1871, admitted that there was due from the defendant to the United States on that day the sum of one million of dollars, and agreed to pay the same as follows: One-half of said sum, five hundred thousand dollars, to be paid ten years after the 1st of June, 1871, and the other half twenty years from said date, with interest upon the whole of said principal sum, until paid, at the rate of four per cent. per annum, payable semi-annually on the 1st day of December and June, counting from 1st June, 1871, the said principal and interest made payable at ———, and secured by the bonds of the Nashville and Chattanooga Railroad Company, and a mortgage on the company's road, property, income, and franchise.

It was further agreed that a final decree might be entered in this cause setting forth the terms of the compromise, and providing that in case of default for more than ninety days in the payment of any instalment of interest as the same falls due, or any part thereof, or of the principal debt at maturity as aforesaid, or any part thereof,

the sum in default might be collected by an execution of the decree. It further appearing by the admissions of the parties by their solicitors in open court that this compromise has been carried out by the execution by the Nashville and Chattanooga Railroad Company of its bonds, with interest coupons attached as agreed upon, and by the further execution of a satisfactory mortgage of the road, property, income, and franchises to secure the said bonds and coupons, according to the terms of the agreement, and the delivery thereof to, and acceptance thereof by, the United States. It is, therefore, by consent of parties, ordered, adjudged, and decreed that the compromise as aforesaid be entered and made the decree of this court, and that the rights of the parties be, and they are hereby, declared adjudged and decreed accordingly.

That the said Nashville and Chattanooga Railroad Company take their road and all its appurtenances as aforesaid, and all the rolling stock, property, and effects, as aforesaid, with all the rights of the United States therein, free from all claim or demand of the United States, and subject only to the debt and lien secured by the said agreement of compromise and of this decree.

And it is further found by the court, in accordance with the terms of said agreement of compromise and settlement, that there was due from the defendant to the United States on the 1st day of June, 1871, for and on account of the claim set forth in the bill of complaint, after allowing all credits thereon for services rendered by the defendant, to and for the use of the complainant for mail service, or military transportation, or on any other account prior to the day last aforesaid, a balance amounting to the sum of one million dollars, to bear interest from said day at the rate of four per cent. per annum, payable semi-annually on the 1st day of June and December of each year, one-half of said principal, to wit, the sum of five hundred thousand dollars, to be paid on the 1st day of June, 1881, and the remainder thereof, to wit, the sum of five hundred thousand dollars, to be paid on the 1st day of June, 1891.

It is, therefore, ordered, adjudged, and decreed that the defendant pay to the complainant the said sum so as aforesaid found due, with the interest thereon as the same accrues, and that the said sums of principal and interest thereon as aforesaid and the payment thereof as hereby ordered stand as a charge and lien upon the road and property of the defendant hereinbefore described, and upon the road, property, income. and franchises as set forth in the mortgage which has been executed in compliance with the agreement of compromise; and that if at any time hereafter the said Nashville and Chattanooga Railroad Company make default for the period of ninety days in the payment of any of the installments of interest or of principal of said debt, or of any part thereof, after the same shall have become due and payable according to the terms and effect of said bonds and coupons, then the United States, on filing with the clerk of this court any of said coupons or bonds past due and unpaid for ninety days, shall have the right to have issued an order for the execution of this decree to the extent of such default by the sale of the railroad and other property of the defendant as hereinbefore described, subject to

the continued lien of this decree and of the said bond and mortgage representing the same debt as to the amount thereof then remaining and not due at the time of said sale, the said sale to be made as other sales of real estate under judicial process as required by law and the practice of this court to be made, and for this purpose this cause is retained in court until otherwise ordered.

It is further ordered that defendant pay all costs of this cause, including the cost of this decree, and in default thereof execution is hereby awarded.

Upon the foregoing facts the conclusion of law is that the claimant's petition should be dismissed on the grounds stated in the following opinion:

10 V.—*Opinion of the Court.*

NOTT, J., delivered the opinion of the court.

The decree which was rendered by the United States circuit court in Tennessee was not a result of litigation, but the fruit of agreement and compromise. The parties litigant virtually went before the court, as contracting parties in European countries go before a notary, and made a declaration of what they had agreed upon, and that declaration was embodied in the form of a decree entered by consent.

When a decree is properly an adjudication, "it is a settled rule that it must conform to the allegations in the pleadings as well as the proofs in the case." (*Crocket* v. *Lee*, 7 Wheaton R., 522.) Hence, when construing such a decree, the generality of its terms must be restrained to the matters set up in the pleadings. So when adverse parties voluntarily enter into an agreement of accord, the instrument ordinarily will be construed as settling only the matter which was in controversy. But it is within the power of the disputants to settle all differences existing between them; and it is the policy of the law that a settlement of things which might have been settled and ought to have been settled shall have full effect given to it, and close the doors of litigation to the contending parties.

In the present case we find, from an inspection of the pleadings, that the claimant's cause of action was not a subject of litigation in the former suit, and that moreover it was not a subject of correspondence nor an item of negotiation when the settlement was a matter of discussion. So far these facts are favorable to the claimant, but we also find, from an inspection of the decree, that the parties went outside of the *allegata* and brought into the settlement various things not subjects of litigation, and, among others, "services rendered by the defendant," the claimant here, "to and for the use of the complainants," the defendants here, "for mail service;" and we find that this "mail service" thus brought into the settlement was without specification or limitation, save that it was rendered "prior to the first day of June, 1871;" and we find, moreover, that the balance of $1,000,000 found to be "due from the defendant to the United States on the 1st day of June, 1871, for and on account

of the claim set forth in the bill of complaint," was struck, "after allowing all credits thereon for services rendered by the defendant, to and for the use of the complainant for mail service, or military transportation, or any other account, prior to the day last aforesaid." Neither party may have thought of this old *ante bellum* claim, yet both may have intended that all demands should be merged in the accord of the decree, those of the past as well as those of the present, those forgotten as well as those remembered. The complainants were seeking to enforce their demands as a matter of right, and the defendant brought into court and tendered, by way of compromise, first, all of its cross-demands against the complainant existing on the day of settlement, including "mail service;" secondly, $1,000,000 of interest-bearing securities. Those being the conditions and circumstances of the settlement, it is impossible for this court to infer that the defendant intended to carve out of the mass of its surrendered cross-demands and reserve to itself for future litigation one little non-interest-bearing claim, in kind, mail service, in time prior to "the 1st day of June, 1871." Such a demand ought to have been included in the settlement, and it is the opinion of the court that it was.

The judgment of the court is that the petition be dismissed.

11 VI.—*Final Judgment of the Court, entered April* 21, 1884.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY,
vs.
THE UNITED STATES.
} No. 13369.

At a Court of Claims held in the city of Washington on the 21st day of April, A. D. 1884, judgment was ordered to be entered as follows:

The Court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the claimant's petition be dismissed.

12 VII.—*Application of Claimants for, and allowance of, Appeal.*

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY,
vs.
THE UNITED STATES.
} No. 13369.

From the judgment entered in the above-entitled cause at the December term, 1883, in favor of the defendants, the claimants, by their attorney, on this 27th day of May, A. D. 1884, make application for, and give notice of, an appeal to the Supreme Court of the United States, the claim in controversy exceeding the sum of three thousand dollars.

CHAS. F. BENJAMIN,
Attorney of Record.

Filed May 27, 1884.

And now, to wit, May 27, 1884, it is ordered that the appeal be allowed as prayed for.

13 In the Court of Claims.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY,
vs.
THE UNITED STATES. } No. 13369.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the Court, and the conclusion of law thereon, of the opinion of the Court, of the final judgment of the Court, of the application of the claimant for the allowance of an appeal to the Supreme Court of the United States, and of the allowance of same.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington, this 9th day of June, A. D. 1884.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

[Endorsed on cover:] Court of Claims. No. 860. The Nashville, Chattanooga and St. Louis Railway Company, appellant, *vs.* The United States. Filed 17th June, 1884.

113-261

Supreme Court of the United States.

OCTOBER TERM, A. D. 1884.

No. 860.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY,
Appellant.

vs.

THE UNITED STATES,
Appellee.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF AND ARGUMENT IN SUPPORT OF THE APPEAL.

CHARLES F. BENJAMIN,
Counsel for the Appellant.

WASHINGTON, D. C.
C. W. Brown, Printer, 923 F Street, N. W.
1884.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1884.—No. 860.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF AND ARGUMENT FOR THE APPELLANT.

STATEMENT OF FACTS.

The appellant, a corporation under the laws of Tennessee, contracted with the United States to carry the mails between certain places in Tennessee for a term of four years from July 1, 1858, at an annual compensation of $32,750, payable quarterly; and duly entered into performance, and performed the contract till service was discontinued by the Postmaster General. The balance due from the United States, under this contract, to May 1, 1861, was $2025.58, or to June 1, 1861, $4754.44, or to June 8, 1861, $5482.31; no part of which balance has been paid by the United States, or other party or person.

In 1871, a suit in equity was pending between these parties for the enforcement of certain demands against the company not connected with the subject-matter of the present cause. The suit was terminated by a decree enrolled

by consent of the parties and based upon a compromise.

Neither in the pleadings nor the negotiations which ended the suit was mention made of the subject-matter of this cause. The compromise is embodied in the decree and the latter appears in full upon pages 7 to 9 of the printed transcript of the record.

In 1882, the appellant prayed judgment in the Court of Claims for the balance due upon account of the service rendered under the above mentioned contract, but the court adjudged that the appellant's petition should be dismissed, upon grounds stated in an opinion which appears upon pages 9 and 10 of the printed transcript, and which is to the effect that the present demand was extinguished by the decree mentioned.

Brief of the Argument.

1. There is no evidence in the record that the parties to the compromise went, or intended to go, beyond the matters then in litigation, in framing their settlement of 1871.

2. The absence of the present demand from the negotiations preceding the compromise, and the recitals of the enabling statute, and of the consent-decree, that it was a "compromise of matters in litigation," and an adjudication of "the rights of the parties," indicate that the decree was intended to deal with actual and not merely potential demands.

3. The language relied upon to include this merely potential demand in the decree is equally applicable to demands then subsisting and valid.

4. At the date of the compromise, the present demand had been invalid and practically dead for four years, and was not revived till nearly six years afterwards.

5. No legal or equitable obligation rested upon the appellant to tender this merely potential demand in settlement, it being at the time without value, and a just *quid pro quo* being otherwise provided.

6. The intent of the parties is to govern the construction

of the consent-decree, in the absence of anything in the language requiring or excusing a construction of the naked words without regard to intention.

7. An amendment to the pleadings, which enlarges the period covered by the demand without enlarging the demand, is not subject to the statute of limitations.

8. The resolution of the Tennessee legislature, prior to the secession of that State, which provided for a military league with the so-called Confederate States was not an act of war against the United States, so as to bar the appellant's right to compensation after the date of said resolution and before the attempted secession of the State from the Union.

Argument.

The judgment appealed to this honorable court is supported by an opinion of the court below, the bases of which may be thus logically and fairly stated:

1. The decree of 1871, being the result of agreement and compromise, was not necessarily restricted to the matters in litigation.

2. As matter of fact, the compromise went beyond the pleadings and brought into settlement sundry external matters.

3. Amongst external matters brought into settlement were "services rendered by the defendant" (the appellant here) "for mail service" rendered "prior to the 1st day of June, 1871."

4. The defendant tendered to the complainant, by way of compromise, all of its cross-demands, including mail service, and a specific sum in interest-bearing bonds.

5. The balance decreed as due to the complainant was struck "after allowing all credits thereon for services rendered by the defendant to and for the use of the complainant, for mail service, or military transportation, or any other account, prior to the day last aforesaid," being the 1st day of June, 1871.

6. It is a reasonable conclusion, from the language and surroundings of the decree, that the demand now in litigation was included in the settlement.

7. This demand, answering to the descriptive language of the compromise, ought to have been included in the settlement.

8. Even if not in the mind of either party at the time of the agreement and compromise, it may none the less have been the intention of the parties to include it in the settlement.

9. It is the policy of the law that settlements of the kind embodied in the decree of 1871 shall be so construed as to avoid further litigation between the accordant parties.

The foregoing summaries, numbered 1, 8, and 9, may be admitted without discussion. As to the rest, taken severally, the following considerations are submitted :

I.

The pleadings in the equity suit of 1871 are not before this court, nor are their contents spread or summarized upon the record here. The court below certifies as facts proven that the claim to a balance for mail service under the *ante bellum* contract was not set up in defense nor mentioned in the proceedings which led to the accord and satisfaction ; but it is only from the opinion of the court (p. 9) that we learn that "the parties went outside of the *allegata* and brought into the settlement various things not subjects of litigation." It might be useful to know how many and what kinds of such things were so brought in, but the record is silent on these two points; and it would not be just to infer anything against the present contention of the appellant upon an unsupported opinion of the court below that things were brought into settlement which had not been included in the litigation. On the contrary, one of the recitals of the decree (p. 7) expressly calls the settlement "a

compromise of all the matters *in litigation* between the parties," and (p. 8) the decree says "*the rights of the parties* be, and they are hereby, declared adjudged and decreed accordingly." Surely, the court would not have presumed to enumerate among "the rights of the parties" anything not brought within its cognizance by pleading, proof or stipulation! True, this *ante bellum* claim might have been brought within such cognizance by appropriate language in the instrument of accord; but how can that course be presumed when the decree, which must have been posterior to the compromise, expressly confines itself to "matters in litigation?" The just conclusion of the matter is, with due respect to the court below, that nothing was brought into settlement which was not in litigation at the time the compromise was negotiated.

II.

But even if no other outside matter was brought into the settlement, this particular matter may have been; and the court below holds that it was so brought, because of certain sweeping clauses in the language of the decree. These clauses (pp. 7, 8) are as follows: "For and in consideration of the settlement, satisfaction, and discharge of all mutual claims and accounts between the parties as they existed on the 1st day of June, 1871;" and * * * "There was due from the defendant to the United States on the 1st day of June, 1871, for and on account of the claim set forth in the bill of complaint, after allowing all credits thereon for services rendered by the defendant to and for the use of the complainant, for mail service, or military transportation, or on any other account, prior to the day last aforesaid, a balance amounting to the sum of one million dollars." Standing alone, these clauses might embrace every conceivable cause of action between the parties—the latter almost certainly would embrace the present cause. But we are to remember that the decree in which we find these clauses recites (p. 7) that "it appeared to the court that, since the

last term, in and by virtue of an act of Congress in that behalf, *a compromise of all the matters in litigation between the parties* has been entered into and fully consummated;" and "it was further agreed that a final decree might be entered in this cause, setting forth the terms of the compromise." Is it reasonable to suppose that the "terms of the compromise" were meant to embrace matters not within the admitted scope and subject-matter of the compromise? If the buyer of a buggy-horse exacts from the seller a warranty that the animal is sound and kind, can the warrantor, from any broadness of expression not amounting to a specific declaration, be presumed to warrant that the horse is also a high stepper, or trained to double harness, or to the saddle? It is proved as a fact that this *ante bellum* mail claim was not in the litigation nor the negotiation that preceded the compromise—how then is it to be supposed to have gotten into the compromise itself? The decree says that the compromise was made "in and by virtue of an act of Congress in that behalf." This act is dated March 3, 1871, (16 Stat. L., 473,) and it describes the litigation then afoot as being "on account of property sold to said corporations by the Government," expresses a desire of "avoiding litigation and loss by the insolvency of any such railroad," and authorizes the Secretary of War "to compromise, adjust, and settle the same upon such terms as to amount and time of payment as may be just and equitable," &c., &c. Here, then, the scope, object, and subject-matter of the compromise are well marked out, and the statute lends no support to the idea that there was, or was meant to be, a general settlement reaching back beyond the time, in 1865, when President Johnson restored the Tennessee railroads to their owners and equipped them from the Government stores on credit, taking security from the roads for payment of the price of such supplies.

It is certified as a fact proved (p. 6) that the appellant "was largely engaged during the rebellion in transporting troops, supplies, and munitions of war, as well as mail, for

the confederate government." The joint resolution of March 2, 1867, (14 Stat. L., 571,) prohibited the payment of any account, claim, or demand against the Government which accrued before the war to any person who promoted, encouraged, or in any manner sustained the rebellion; and it was not till the time of the act of March 3, 1877, (19 Stat. L., 344, 362,) that payment of the amount due to mail contractors in Tennessee, for service rendered before said State engaged in war against the United States, was authorized. Nothing can seem more reasonable than to suppose that, at the time of the compromise in 1871, both parties would regard the present cause of action as having been extinguished by the joint resolution of 1867.

If, then, the decree is to be construed according to the intention of the parties, it would seem to have been their intention not to include in the settlement a demand practically extinguished in 1867, and not restored to life and validity till long after such settlement. And, in view of the context, it will hardly be contended that the sweeping clauses of the decree are properly subject to that rule of law which occasionally sacrifices intention when intention can only be preserved by means of an actual perversion, if not subversion, of language. It is matter of history and public notoriety, firstly, that the railroads in Tennessee were restored to their owners in 1865; secondly, that there was much military occupation and movement in the lately insurgent States from the cessation of hostilities till the incoming of the administration of President Hayes; and, thirdly, that wherever railroads exist their services are habitually engaged for the carrying of the mails. We are not, therefore, driven back to 1861, or earlier, to find facts consistent with the language, "mail service, or military transportation, or on any other account, prior to the day last aforesaid"—meaning June 1, 1871. The Tennessee railroads must have been carrying mails, troops, and munitions between 1865 and 1871, and if any of them had defaulted on their debts to the Government, as suggested by the act of

March 3, 1871, nothing is more natural than to assume that the Government would stop paying their accounts for transportation of its mails, troops, and stores pending a settlement. It is therefore reasonable to infer that at the time of the compromise the appellant had unsettled demands against the appellees for "mail services," "military transportation," or "other account," *prior* in time to June 1, 1871, but *after the close of the war.*

III.

It may be true, as suggested in the opinion of the court below, that the appellant tendered to the United States, in the compromise proceedings of 1871, all of its cross-demands, including mail service; and yet it may not be true that the present cause of action was so tendered. That would depend upon whether the present claim was then in mind, or, if in mind, whether it was regarded as still subsisting, so as to be a proper subject of tender. If not in mind, the question is whether the parties intended the compromise to dispose only of the matters they had been contesting and negotiating, or also matters forgotten, or disregarded, or unknown. This question has been discussed already.

IV.

It is true that in the decree the appellant here was allowed "all credits" for "mail service, or military transportation, or any other account, prior to the day last aforesaid," but it is equally true that the decree is self-limited to "matters in litigation" and "the rights of the parties"—descriptions which at that time did not, either of them, reasonably apply to the present subject-matter of litigation.

V.

When the court below says in the opinion (p. 10) that "it is impossible for this court to infer that the defendant intended to carve out of the mass of its surrendered cross-de-

mands, and reserve to itself for future litigation one little non-interest bearing claim, in kind, mail service, in time prior to the 1st day of June, 1871," its language goes beyond the necessities of the occasion. The question before the court was not what "the defendant" intended about a claim which had neither been set up nor tendered, and which the court below admits may have been forgotten, but what did the parties to the settlement mean to put into that settlement. We can conceive of the parties intending, by way of abundant precaution, to include every potential, as well as every actual demand, upon the theory that governed Diedrich Knickerbocker in dating his history of New York back to the beginning of the world; but in view of the joint resolution of 1867, and the lapse of time between rendition of the *ante bellum* service and the compromise, we cannot reasonably conceive of the appellant having any direct and particular intention respecting its unsettled demand of 1861. Whether the settlement was intended to include speculative and potential, as well as actual demands, is a question that has been already considered.

VI.

The court below holds (p. 10) that "such a demand ought to have been included in the settlement." Why so? The Government had virtually decided, four years before, that the demand should not be paid; it did not ask the appellant to give it up; there is not the slightest probability that in 1871 it would have allowed a credit of one dollar upon it; the appellant had not been urging it, nor asking anything upon account of it, and there is no reason to infer that the one million dollars' worth of interest-bearing and secured bonds was not a fair *quid pro quo* without it. Hence, there seems to have been many rational grounds for letting it alone by both sides; and yet the court below says it "ought to have been included in the settlement."

This completes the review of every material base upon which the court below rested its judgment—that the claim involved in the present action had been extinguished by an accord and satisfaction. As understood by the appellant, the decisive question before this court is: What matters, or classes of matters, did the parties to the accord *intend* to settle by their compromise? We see no ground for apprehending that the language of the decree will be found inconsistent with the intention of the parties, or that, in giving force to the language, the intention will have to be disregarded; and hence we confine our argument on this part of the cause to the matter of intention only.

VII.

It appears by the record (p. 3) that leave was granted to the appellant to amend its petition to the court below, so as to claim pay for mail service up to the 8th instead of the 1st day of June, 1861, but all rights of the defendants were preserved under the statute of limitations or otherwise. Section 1069 R. S. provides that "every claim against the United States, cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court * * within six years after the claim first accrues."

It appears by the record (p. 1) that the petition was filed November 22, 1882, less than six years after the claim accrued under the act of March 3, 1877, *supra*. That petition alleges performance of the contract sued upon till "the contract and services were terminated by the United States," and alleges the sum of $8,187.50 to be due in consequence of said services and termination of contract. The petition is defective in that it alleges June 1, 1861, to be the day upon which service ended and up to which compensation is due. The amendment (p. 2) conditionally allowed purposes to substitute July 10, 1861, as the day upon which service terminated, and June 8, 1861, as the day up to which compen-

sation is due; but it is not material now whether the service be regarded as ending July 10th or June 8th, the court below having found (p. 3) that the appellant performed service till stopped by the Postmaster-General. The substantial purport of the amendment is to claim pay for seven days longer than in the original petition. If this be permitted, the sum total of the claim, as found by the court (p. 4), will be much less than is claimed in the original petition. In Devlin *vs.* The United States (12 Ct. Cls., 266) the court overruled a plea of the statute of limitations to an amendment, saying: "An amendment of a petition made by leave of court is not a distinct suit; and in this case it altered the original petition only in increasing the *ad damnum*, and the judgment of the court is on the original petition and within the *ad damnum* specified in it." (See, also, Haskins *vs.* Berris, 23 Vt., 673; Tidd's Practice, 693, and note.)

VIII.

It is contended in behalf of the United States that the appellant is not entitled to recover for services rendered after May 1, 1861, because on that day the State of Tennessee "engaged in war against the United States." The act relied upon as constituting war is the joint resolution of the Tennessee Legislature, which authorized the governor to appoint commissioners to enter into a military league with the authorities of the Confederate States, "having in view the protection and defense of the entire South against the war which is now being carried on against it." The commissioners were appointed and the "military league" was made, but it does not appear that anything was done under it until after the electors of the State had voted in favor of separating Tennessee from the Union, which vote was on June 8th (Greeley's American Conflict, Vol. 1, pp. 481–84). If the popular vote had been against separation, and the State had therefore remained in the Union, who could be found to say now that it had ever "engaged in war against the United

States," because the Legislature had adopted measures looking or tending towards war? (See, as to what constitutes war, *The Prize Cases*, 2 Black, 667.)

We submit, that upon the record and the law of the case, the appellant is entitled to a judgment reversing the judgment appealed from, and ordering the court below to enter judgment for the appellant in the sum of $5,482.31.

CHARLES F. BENJAMIN,
Counsel for Appellant.

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In the Supreme Court of the United States.

OCTOBER TERM, 1884.

THE NASHVILLE, CHATTANOOGA, &C., Railroad Company
vs.
THE UNITED STATES.
} No. 860.

BRIEF FOR THE UNITED STATES.

The above case is submitted upon the reasoning in the opinion of the learned court below.

S. F. PHILLIPS,
Solicitor-General.